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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,256	12/02/2003	John McDonald	FCMCCG.002DV1	3528
20995	7590	02/14/2006		
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,256	<b>Applicant(s)</b> MCDONALD ET AL.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-73 is/are pending in the application.  
4a) Of the above claim(s) 47-62 and 69-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-35, 37, 42-44, 46 and 63-68 is/are rejected.
- 7) ☐ Claim(s) 36, 38-41 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/05/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 47-62 and 69-73 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/23/05.

Applicant's election with traverse of Species I, Figs. 1-8, in the reply filed on 12/23/05 is acknowledged. The traversal is on the ground(s) that the search and examination can be made without serious burden on the examiner even though it includes claims to independent or distinct inventions. This is not found persuasive because it is a burden on the examiner to search and examine additional claims to independent and distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

Claim 42 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 42 is a duplicate of claim 34.

Claim 63 is objected to because of the following informalities: In line 2 Applicant has the words "including" and "includes" next to each other. Examiner, for examination

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purposes, will assume Applicant intended to use the word "includes" only. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33,34 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Ridgeway (U.S. Pat. No. 4,852,743).

As to claim 33, Ridgeway discloses a packaging assembly (Ridgeway Fig. 1) comprising a first frame member (3) having first and second free edges, a second frame member (9) having third and fourth free edges, a first retention member (7) extending between the first and second free edges (see corners of frame 3) and a second retention member (12) extending between the third and fourth free edges (see corners of frame 9) where the first and second frame members are configured to nest with the first and second retention members facing each other (Fig. 2).

As to claims 34 and 42, Ridgeway discloses that the first and second retention members are substantially resilient (Ridgeway Column 4, lines 11-19 and 34-36) and the first and second frame members are substantially rigid (Column 4, lines 6-9).

Claims 33-35,37,42-44,46 and 63-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Lofgren et al., (U.S. Pat. No. 5,669,506).

As to claim 33, Lofgren discloses a packaging assembly (Lofgren Fig. 1) comprising a first frame member (Fig. 5, end panel 14) having first and second free edges, a second frame member (end panel 14) having third and fourth free edges, a first retention member (16, top layer of supporting hammock shown) extending between the first and second free edges and second retention member (16, bottom layer of supporting hammock shown) extending between the third and fourth free edges where the first and second frame members are configured to nest with the first and second retention members facing each other (Fig. 1). The frame members can inherently nest with the first and second retention members facing each other in an outer container.

As to claims 34 and 42, Lofgren discloses that the first and second retention members are substantially resilient (Lofgren Column 2, lines 20-22) and the first and second frame members are substantially rigid (Column 2, lines 40-42).

As to claim 35, Lofgren discloses that the first frame member includes at least a first tapered portion extending from the first free edge (Fig. 5 where the free end corner of end panel/frame member 14 slopes down to base 12).

As to claim 37, Lofgren discloses that where the first and second free edges extend longitudinally, each of the first and second free edges include tapered portions disposed at opposite longitudinal ends thereof (Fig. 5 space between where the free end corners of end panel/frame member 14 meet the inclined surface extending down to base 12).

As to claim 43, Lofgren discloses that the first frame member comprises first and second peripherally extending structures supporting the first and second free edges

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(Fig. 5 left inclined surface extending from the free edges of frame 14 down to base 12) and that the second frame member comprises third and fourth peripherally extending structures supporting the third and fourth free edges (Fig. 5 right inclined surface extending from the free edges of frame 14 down to base 12).

As to claim 44, Lofgren discloses that tapered portions are formed on the opposite ends of each of the first and second free edges (Fig. 3 where panels 18 and 44 meet) and that at least first and second inclined walls form a portion of the third and fourth peripherally extending structures (Fig. 5).

As to claim 46, the first, second, third and fourth peripherally extending structures are triangular in cross section (Fig. 5).

As to claims 63-65, Lofgren disclose a frame comprising a body portion (Fig. 3, 12, 18, 20, 44) and at least a first and second foldable portion (48) including at least a first plurality of folds (42, 48) where the plurality of folds is configured such that the first foldable portion is moveable between a first position and a second deployed position (compare Fig. 3 with Fig. 5) in which the first foldable portion forms releasably engageable triangular first and second peripherally extending structures (Fig. 5 inclined surfaces shown) defining a boundaries substantially surrounding a volume of space (Fig. 5 triangular void formed when inclined surface 18 [not labeled in Fig. 5] is folded to mate with base 12).

As to claims 66 and 67, Lofgren discloses a gap between the peripherally extending structures (Fig. 5, 12) and that the structures act against each other as can

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be seen since the retention members (16) are in tension when the frame is assembled (Column 3, lines 15-27).

As to claim 68, Lofgren discloses that the first peripherally extending structure extends from the body (Fig. 3, 18; Fig 5 generally).

***Allowable Subject Matter***

Claims 36,38-41 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luray (U.S. Pat. No. 3,853,220) and Bradford (U.S. Pat. No. 5,218,510) disclose suspension packaging assemblies analogous to applicant's instant invention. Jone (U.S. Pat. No. Re. 36,412) discloses a frame member surrounded by a retention sleeve member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 2/8/06

LSR

  
**JILA M. MOHANDESI**  
**PRIMARY EXAMINER**